IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION No.2558 of 2004

Between:

Rampalli Venkata Satya Gowri Shanker Rao Patnaik
s/o. Rama Rao, R/o. Pedachamalapalli Village,
Pedamanapuram, Vizianagaram District.

..... PETITIONER

AND

1 The Commissioner and Director of School Education, Saifabad, Hyderabad.
2 Regional Joint Director, School of Primary Education, Kakinada, East Godavari District.
3 The District Educational Officer, Srikakulam Srikakulam District.
4 The Management and Correspondent, C.B.M. Aided Elementary School, Veeraghattam, Srikakulam District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue writ of Mandamus or any other appropriate writ or direction declaring the action of the respondents in not releasing the salary arrears of the petitioner herein during the period between 7-4-1992 to 22.9.1995 worked as a teacher in the 4th respondent school is arbitrary, illegal and improper and consequently direct the respondents to regularise the petitioner's services as Secondary Grade Teacher, in the 4th respondent school.

Counsel for the Petitioner:MR.LINGESWARA RAO PANDRANKI

Counsel for the Respondents 1 to 3: GP FOR SCHOOL EDUCATION

Counsel for the Respondent No.4: Mr.Moola Vijaya Bhaskar

The Court made the following :

ORDER:

This writ petition is filed seeking a declaration that the action of the respondents in not paying the arrears of salary to the petitioner for the period from 07.04.1992 to 22.09.1995 is arbitrary and illegal and for a consequential direction to respondents to regularize the services of the petitioner as Secondary Grade Teacher in the fourth respondent-institution.

The brief facts that are necessary for the disposal of this writ petition may be stated as follows:

The petitioner was initially appointed as Secondary Grade Assistant Teacher on 18.03.1991 in the fourth respondent aided school in pursuance of G.O.Ms. No. 524 Education, dated 19.12.1988 and the appointment of the petitioner was approved by the then District Educational Officer vide proceedings dated 28.03.1991. Since then he was working in C.B.M., aided elementary school, Veeraghattam with unblemished record. While so, the petitioner was transferred to CBM aided elementary school, Pedamedapalli, Mentada Mandal, Vizianagaram District and till today he has been working there. While the petitioner was working at CBM aided school, Veeraghattam for the period from 19.03.1991 to 06.04.1992, he was not paid the salary despite his repeated reminders. Therefore, he filed a writ petition in W,.P.No. 17130 of 2000 against the respondents and the same was disposed of on 14.09.2000 directing the fourth respondent to pay the arrears of salary to the petitioner and accordingly, the fourth has paid the same. Again, the fourth respondent failed to pay salary to the petitioner for the period from 07.04.1992 to 22.09.1995 despite his repeated reminders and also failed to regularize the services of the petitioner. Hence this writ petition.

The District Educational officer, Srikakulam District filed a counter affidavit admitting the appointment of the petitioner as a Secondary Grade Teacher in the fourth respondent institution and also payment of arrears of salary to the petitioner for the period from 19.03.1991 to 06.04.1992 in pursuance of the directions given by this Court in W.P.No. 17130 of 2000 dated 14.09.2000. It is stated that the petitioner was not transferred from C.B.M.,Aided Elementary School, Veeraghattam to C.B.M. Aided Elementary School, Pedamedapalli, and there is no documentary proof to that effect. The petitioner has not worked in any of the schools of the fourth respondent-

institution for the period from 07.04.1992 to 22.09.1995. Therefore, he is not entitled for salary for the said period. It is further stated that the disputed questions of fact cannot be determined in a writ petition. The remedy for the petitioner is to approach the departmental authorities for redressal of his grievance. Hence, he prays to dismiss the writ petition.

The fourth respondent has also filed a counter-affidavit admitting the appointment of the petitioner and also payment of arrears of salary as per the directions of this Court. However, it is stated that the appointment of the petitioner was challenged before this Court in W.P.No. 15658 of 1991 and in view of the orders passed by this Court in W.P.M.P.No. 199595 of 2001 dated 11.03.1992 in the said writ petition, the then District Educational Officer, Srikakulam withdrew the proceedings dated 23.05.1992, which were issued approving the appointment of the petitioner. The petitioner was reappointed in the fourth respondent institution on 23.09.1995. During the period from 07.04.1992 to 22.09.1995, the petitioner has not worked in any of the schools of the fourth respondent-institution. Therefore, he is not entitled for salary for the said period.

Learned counsel for the petitioner contended that the petitioner is in continuous service in the fourth respondent-institution from the date of his appointment, dated 18.03.1991 till today and therefore, he is entitled for salary for the period from 07.04.1992 to 22.09.1995. Hence, he prays to allow the writ petition.

On the other hand, learned counsel for respondents 1 to 3 and the learned standing counsel appearing for the fourth respondent –institution contended that in pursuance of the directions issued by this Court in W.P.M.P.No. 199595 of 1991 in W.P.No. 15658 of 1991, the then District Educational Officer in his proceedings dated 23.05.1992 withdrew the appointment of the petitioner with immediate effect. They further contended that the petitioner has not worked in any of the schools of the fourth respondent-institution during the period from 07.04.1992 to 22.09.1995 and there is no documentary evidence such as service register, attendance register, etc., to that effect. Therefore, the petitioner is not entitled for any salary for the said period.

Now, it is to be noted that in pursuance of the directions given by this Court on 11.03.1992 in W.P.M.P.No. 199595 of 1991 in W.P.No. 15658 of 1991, the petitioner was precluded from discharging his functions as a Secondary Grade Basic Training Teacher in the fourth respondent institution. Consequently, the District Educational

Officer on 23.05.1992 withdrew the appointment of the petitioner with immediate effect. Again the petitioner was appointed by fourth respondent vide proceedings dated 23.09.1995. So, these proceedings would clearly indicate that he was appointed as a fresh candidate as a Secondary Grade Teacher on 23.09.1995.

However, learned counsel for the petitioner contended that under the subsequent proceedings dated 23.09.1995 the petitioner was transferred from earlier place and therefore, he is entitled for arrears of salary for the said period. This Court is unable to accept the same because the earlier appointment orders issued to the petitioner were withdrawn by the District Educational Officer in his proceedings dated 23.05.1992 and the proceedings dated 23.09.1995 would clearly go to show that it was a fresh appointment order to the petitioner.

The contention of the learned counsel for the petitioner is that the proceedings dated 23.05.1992 have not been issued to the petitioner. The proceedings dated 23.05.1992 clearly indicate that it was marked to the petitioner to be served through the correspondent. In any view of the matter, as the petitioner is a party to the said W.P.M.P., he cannot plead that he does not know the orders of this Court. So, by virtue of the order in the W.P.M.P., the petitioner cannot be said to be discharging his functions as Secondary Grade Teacher from the date of his initial appointment. The order of the District Educational Officer dated 23.05.1992 is only a consequential order in pursuance of the directions given by this Court. There is no other material to show that the petitioner worked in any of the schools of the fourth respondent-institution from 07.04.1992 to 22.09.1995 so as to claim his salary. Perhaps that is the reason why the District Educational Officer rejected the claim of the petitioner on the ground that the petitioner failed to produce any documentary evidence to show that he worked from 07.04.1992 to 22.09.1995.

However, learned counsel for the petitioner relied upon a decision in ***District Educational Officer, Vs. B.V.Ramana***, wherein, it was held that when the appointment made by the management was sent for approval to the competent authority and when no order was passed by the competent authority within three months, the appointment is deemed to have been ratified by the competent authority.

However, the said decision has no application to the facts on hand in view of the fact that the issue involved in this case is not deemed approval from the competent authority. This is a case where in pursuance of the directions given by this Court

consequential orders have been issued by the District Educational Officer cancelling the appointment of the petitioner. Since the petitioner has not worked in the fourth respondent institution from 07.04.1992 to 22.09.1995, the question of payment of salary for the said period does not arise. So also, when the petitioner has not worked during that period, the question of regularization does not arise.

Therefore, the writ petition is devoid of merits and the same is accordingly dismissed. No costs.

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28.06.2005

Note: Furnish C.C., in one week.

(B/O)

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To

1 The Commissioner and Director of School Education, Saifabad, Hyderabad.
2 The Regional Joint Director, School of Primary Education, Kakinada, East Godavari District.
3 The District Educational Officer, Srikakulam, Srikakulam District.
4 The Management and Correspondent, C.B.M. Aided Elementary School, Veeraghattam, Srikakulam District.

5 Two C.Cs to the G.P., for School Education, High Court Buildings, Hyderabad (OUT).

6 2 CD copies.